

REMARKS

Amendments

Amendments to the Claims

Applicant has amended the claims to more particularly point out what Applicant regards as the invention. In particular, the independent claims have been amended to incorporate subject matter previously presented in dependent claims 6, 12-13, and 15-16 et al., which have been cancelled. No new matter has been added as a result of these amendments.

Rejections

Rejections under 35 U.S.C. § 102(e)

Claims 1-11, 14, 17, 19-29, 32, 35, 37-47, 50, 53 and 55-60

Claims 1-11, 14, 17, 19-29, 32, 35, 37-47, 50, 53 and 55-60 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chess et al., U.S. Patent No. 6,560,623. Claims 6, 14, 24, 32, 42, 50 and 60 have been cancelled. Applicant does not admit that Chess is prior art and reserves the right to challenge the reference at a later date. Nonetheless, Applicant respectfully submits that Applicant's invention as claimed in claims 1-5, 7-11, 17, 19-23, 25-29, 35, 37-41, 43-47, 53 and 55-59 is not anticipated by Chess.

Chess discloses a distributed system that checks files for malicious code. If a file is received that could contain malicious code but does not match known malicious code, the file is prioritized and queued for subsequent analysis. Chess also discloses that information queries may be queued while the file containing the requested information is checked for malicious code.

In contrast, Applicant claims prioritizing and queuing a virus scanning request. The Examiner appears to be equating Chess's queuing of a file for analysis with Applicant's claimed queuing of a virus scan request. However, the *queuing of a file* for analysis cannot be properly equated with the *queuing of a request* for a file to be analyzed. Nor is the queuing of an information request as disclosed by Chess equivalent

to Applicant's claimed queuing of a virus request because Chess does not teach or suggest that an information request is a request for a virus scan.

Furthermore, the Examiner admits that Chess does not disclose prioritizing the virus scan request based on its characteristics as claimed in the amended independent claims.

Accordingly, Applicant respectfully submits that the invention claims in claims 1-5, 7-11, 17, 19-23, 25-29, 35, 37-41, 43-47, 53 and 55-59 is not anticipated by Chess under 35 U.S.C. § 102(e) and respectfully requests the withdrawal of the rejection of the claims.

Rejections under 35 U.S.C. § 103

Claims 12, 13, 15, 16, 30, 31, 33, 34, 48, 49, 51 and 52

Claims 12, 13, 15, 16, 30, 31, 33, 34, 48, 49, 51 and 52 stand rejected under 35 U.S.C. § 103(a) as being obvious over Chess in view of Cisco. Claims 12, 13, 15, 16, 30, 31, 33, 34, 48, 49, 51 and 52 have been cancelled and their subject matter incorporated into the corresponding independent claims. Accordingly, Applicant respectfully submits that the combination of Chess and Cisco does not teach or suggest each and every limitation of independent claims 1, 19, 37 and 55.

The Examiner asserts that Cisco discloses the particular characteristics of a virus scanning request as claimed by Applicant. However, there is no disclosure in Cisco directed toward any of 1) the identity of the user triggering a virus scan request, 2) the type of the process accessing the object of the request, 3) a time stamp of when the virus scan request was received, or 4) an indication of a network node accessing the object. Indeed, the Examiner admits he is relying on the principal of inherency to find that Cisco suggests claim characteristics 1, 2 and 4. The Examiner is respectfully reminded that the principal of inherency cannot be based on mere speculation. Instead, the reference must make it clear that the missing claimed elements are necessarily present in the thing described in the reference. [MPEP § 2112 IV] The Examiner's argument for inherency is a bald statement unsupported by any evidence or logical reasoning. Indeed, Applicant respectfully submits that one of skill in the art would not recognize that the claimed characteristics are a necessary corollary of the elements described in Cisco. Accordingly, Applicant respectfully challenges the Examiner's assertion of inherency. If the Examiner

maintains his rejection of the claims under the principal of inherency, the Examiner is required to provide objective evidence or cogent technical reasoning that the claimed characteristics necessarily flow from Cisco's description. [MPEP § 2112 IV]

With regard to claim characteristic 3, the Examiner states that the first-in, first-out (FIFO) processing in Cisco is equivalent to a time stamp. Cisco specifically states the FIFO queuing adheres to the classic algorithm. One of skill in the art knows that the classic FIFO queuing does not rely on time stamps but is based on queuing order. Thus, Cisco cannot be properly interpreted as disclosing Applicant's characteristic 3 as claimed

Furthermore, the Examiner's attention is drawn to the particular wording of claims 37 and 55 that claim that multiple characteristics are used to prioritize the virus scan request. Since neither Chess nor Cisco teach or suggest any of the claimed characteristics, the combination cannot be properly interpreted as disclosing the use of multiple characteristics as claimed.

Therefore, the combination Chess and Cisco cannot render obvious Applicant's invention as claimed in amended independent claims 1, 19, 37 and 55, and claims 2-5, 7-11, 17, 20-23, 25-29, 35, 38-41, 43-47, 53 and 56-59 that depend from them.

Claims 18, 36 and 54

Claims 18, 36 and 54 stand rejected under 35 U.S.C. § 103(a) as being obvious over Chess in view of McAfee. Applicant respectfully submits that the combination does not teach or suggest each and every limitation of Applicant's invention as claimed in claims 18, 36 and 54.

Claims 18, 36 and 54 depend from independent claims 1, 19 and 37, respectively. Because Chess does not disclose prioritizing virus scanning requests based on characteristics of the request, McAfee must do so to have a proper *prima facie* case of obviousness for claims 18, 36 and 54. As disclosed by McAfee, the user selects the files to be scanned for viruses but McAfee contains no disclosure as how, or even if, the scans are prioritized. Thus, McAfee cannot be properly interpreted as disclosing prioritizing virus scanning requests, much less prioritizing requests based on characteristics of the request as claimed.

Therefore, the combination of Chess and McAfee cannot render obvious Applicant's invention as claimed in claims 18, 36 and 54, and Applicant respectfully

requests the withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over the combination.

SUMMARY

Claims 1-5, 7-11, 17-23, 25-29, 35-41, 43-47 and 53-69 are currently pending. In view of the foregoing amendments and remarks, Applicant respectfully submits that the pending claims are in condition for allowance. Applicant respectfully requests reconsideration of the application and allowance of the pending claims.

If the Examiner determines the prompt allowance of these claims could be facilitated by a telephone conference, the Examiner is invited to contact Sue Holloway at (408) 720-8300 x309.

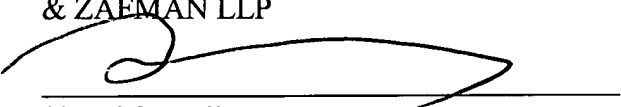
Deposit Account Authorization

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicant hereby requests such extension.

Respectfully submitted,

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